D.B. SPECIAL APPEAL NO.424/2000
(Gyan Chand Jain Vs. State & Ors.)

Date of order : 12.9.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Dinesh Mehta, for the appellant.
Mr. R.P.S. Choudhary, AAG.

We have heard learned counsel for the parties.

This appeal is directed against the order of the learned Single Judge, rejecting the application for review of the judgment passed by him dismissing SB Civil Writ Petition No.1051/1997 on 17.3.1998.

Brief facts necessary for the present purposes are that Gyan Chand – appellant has purchased the land in question jointly alongwith one Laxman Singh by registered sale deed dated 12.3.1984. Said Laxman Singh executed a release deed relinquishing his share in favour of co-owner – the present appellant, which was duly executed and registered on 17.7.1985. No objection as to the nature of the documents and stamp duty paid was raised by Sub-Registrar at that time. After sub-section (2) (a) and consequential amendments were made in sub-section (3) of Section 47-C, which itself was inserted in the Rajasthan Stamps

Act in 1982, a reference was made by the Sub-Registrar to the Collector (Stamps) opining that the nature of the documents was not of release deed but was in fact a conveyance falling under Article of the schedule providing for stamp duty and therefore proper stamp duty was not paid thereon which was payable as conveyance.

The reference was accepted by the Collector (Stamps) vide order dated 24.2.1993 holding the document to be a conveyance and determined the value of the land in question at Rs.3,00,000/-. Consequently, determined Rs.39,022.75 paisa as proper stamp duty payable thereon. Along with the aforesaid stamp duty Rs.50/- by way of a penalty and additional duty of Rs.61.50 paisa were held to be payable by the petitioner and demand notice in respect thereof was issued.

Revision against the aforesaid order was dismissed by the Board of Revenue by holding the documents to be a document of conveyance.

The writ petition challenging the order of Board of Revenue and Collector (Stamps) referred to above was also dismissed by the learned Single Judge agreeing with those findings vide judgment under appeal. Thereafter, review petition was filed out of which the present special appeal has arisen.

Apart from raising the general grounds and contending that holding the documents to be a deed of conveyance was erroneous as per the principles enunciated by Supreme Court and High Courts, twofold contentions were raised directly in respect of exercising the power of review by this Court. Firstly, that the reference submitted by the Sub-Registrar in the wake of the amendment made in the Rajasthan Stamps Act, empowering the Sub-Registrar to make a reference to the higher authorities for determining the nature of the documents after the documents have been registered. It was contended by the learned counsel that since the amendment in the Act was not retrospective, the Sub-Registrar had no jurisdiction to make reference by invoking the amended provisions at the time when the document was registered.

This contention has rightly not been sustained by the learned Single Judge inasmuch as the power to consider the nature of a documents which has already been registered otherwise vested in the Collector (Stamps), which power he could exercise even suo-motu and no time limit was prescribed for invoking such jurisdiction. Therefore, on the basis of the information submitted by Sub-Registrar, the Collector (Stamps) could have acted on it. Therefore, exercise of authority by Collector (Stamp) even if it be held

that Sub-Registrar could not act under Section 47-C (3), still cannot be held to be bad. The contention that the power has not been exercised within a reasonable time cannot be permitted to be raised for the first time by way of review petition.

Second contention which was raised before the learned Single Judge on the ground of review was that at any rate for exercising the power under Section 47-C, the determination of the value of the share of Laxman Singh which was released by him by the impugned document, the market value of land could be calculated as if the conveyance took place in 1985 and not the market value existing in 1993. It is not in dispute that the property was purchased for Rs.40,000/- in 1984 and release deed was executed by Laxman Singh in July, 1985. In these circumstances, the determination of the market value of the land, considering it to be conveyance ought to have been made as on the date when the release deed was executed and not from the date when reference for determination of the true nature of the documents was made to the Collector. The valuation for the purpose of determining true stamp duty is exercise of power under Section 47-C was clearly a mistake apparent on the face of record and required to be corrected.

This point has been specifically raised by the learned counsel in his memo of review application.

However, the learned Single Judge has not noticed this ground at all and has made certain remarks about the bonafide of the petitioner-appellant in invoking power of review by this Court, which in our opinion were wholly uncalled for with such abrasive remarks the review application was dismissed with the cost of Rs.10,000/-.

Apparently, the document in consideration before the Collector (Stamps) in terms of Section 47-C (3) was a document which was executed and registered on 17.7.1985. It is trite to say that stamp duty is attracted as on the date the document to be stamped is executed and not with reference to any other date. That being the position the determination of the levy on the prevailing market price of subject matter or conveyance in 1993 to that extent was determined which was not authenticated was not correct. The appellant cannot be deprived of his right for clear refund of the amount paid in excess of the stamp duty as could have been levied on the date the document was executed. This mistake was apparent on record and needed to be corrected.

It is another aspect of the matter that levy of the tax is creation of the statute and everybody are required to pay tax but not a penny more not a penny less. Thus, the authorities concerned have committed mistake in calculating the stamp duty to be

paid by the petitioner-appellant. In this view of the matter when this mistake was brought before this Court, it was a fit case in which power of review vested in the Court under Constitution as a Court of record ought to have been exercised to see that such mistake does not remain on record and correct the said mistake by directly determination of the market value of the property subject matter of document executed in 1988 as on the date the release deed was executed and not as on the date in exercise of the power under Section 47-C (3). That mistake is required to be corrected. Accordingly, to that extent the review application ought to have succeeded.

Consequently, this appeal is partly allowed. The judgment under appeal is set aside; the review petition filed by the petitioner-appellant is partly allowed to the extent that the value of the share of Laxman Singh in the property in question which became subject matter of conveyance as per finding recorded by the Collector (Stamps) and affirmed by Dy. Inspector General (Stamps) must be determined as on the date the release deed was executed by Laxman Singh and Stamp Duty paid be re-determined. It has been brought to our notice that the value of the share of property of Laxman Singh was accepted by the Sub-Registrar and that value is not disputed by the appellant also at the time of its registration at Rs.44,000/-. In view of aforesaid, the stamp duty be

determined by taking the value of share of Laxman Singh, the subject of document in question at Rs.44,000/- as on the date of its execution i.e. 17.7.85 and after adjustment of the amount already paid, stamp duty payable by the applicant, if any, and the same may be received, if not already paid by the petitioner may be calculated, in case document already registered, the excess amount if already paid by the petitioner may be refunded to him. Apparently from the facts noticed by us the induction of appellant as acting malafide was uncalled for and so also imposition of exemplary cost. The imposition of the cost by the learned Single Judge is, therefore, also set aside. No order as to cost.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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